



GST KEY UPDATES

MAY, 2020

HRD 022/ 20-21

HINESH R. DOSHI & CO. LLP
Chartered Accountants



CONTENTS

Sr. No.	Particulars	Page No.
1.	Key Points	3
2.	Significant Notifications	4
3.	Significant Circulars and Orders	8
4.	Recent Case Laws	12
	✓ Whether overseas laboratory services received by DKMS BMST Foundation falls under health care services and is exempt from tax leviable thereon?	12
	✓ Allowing all assessees to claim ITC in GST TRAN-1 by 30.06.2020.	13
	✓ AAR Ruling on Applicability of GST Composition Scheme and Applicable Tax Rate	14
	✓ Applicant seeks the procedure to be followed under GST Act for discharging GST Liability	15
	✓ Applicability of GST for Hotel Accommodation and related services.	16
	✓ Allowance of rectification of GST returns of 2017	18
	✓ Whether ITC can be claimed if a taxpayer purchases goods from second hand dealers who has opted for margin scheme of valuation for payment of GST?	19
	✓ Availability of ITC on detachable sliding and stackable glass partitions	20
	✓ Incomes to be included in determining Aggregate Turnover for the purpose of GST Registration	21
	✓ No separate GST registration is required for the execution of works contract in other states	22



KEY POINTS

- **GSTR-3B** can be filed through **EVC** till **30.06.2020** in case of registered person being Company. NIL GSTR3B Return allowed to be filed by **SMS**.
- New GST Registration for corporate debtors undergoing Corporate Insolvency Resolution Process to be taken within thirty days of the appointment of the IRP/RP or by **30th June, 2020, whichever is later**.
- The validity of e-way bills is extended till **31.05.2020** for those e-way bills which expire during the period from **20.03.2020 to 15.04.2020** and generated till **24.03.2020**
- The due date for furnishing GST annual return/reconciliation Statement (**GSTR9 / GSTR 9C**) for **FY 2018-2019** is extended to **30th September, 2020**.
- Extension of the due date for furnishing FORM GSTR-3B, **Jan-March, 2020** returns for the taxpayers registered in **Ladakh and Jammu & Kashmir**.



SIGNIFICANT NOTIFICATIONS

Notification No.	Key Update
<p>38/2020- Central Tax, Dt-05-05-2020</p> <p>and</p> <p>35/2020- MGST, EO No. 111 Dt-13-05-2020</p>	<p>➤ <u>GSTR-3B can be filed through EVC till 30.06.2020 in case of registered person being Company. NIL GSTR3B Return allowed to be filed by SMS.</u></p> <ul style="list-style-type: none">• Enablement of EVC- <p>The registered person registered under the provisions of the Companies Act, 2013 will be allowed to file GSTR-3B through electronic verification code (EVC) without using DSC during the period from 21st April, 2020 to 30th June, 2020.</p> <ul style="list-style-type: none">• Enablement of SMS- <p>A new clause 67A has been inserted. As per the said provision, a registered person will be allowed to file Nil GSTR-3B for a tax period through a short messaging service using the registered mobile number and Nil GSTR-3B shall be verified by a registered mobile number based One Time Password facility.</p> <ul style="list-style-type: none">• For the purpose of this rule, a Nil return shall mean a return for a tax period that has nil or no entry in all the Tables in FORM GSTR-3B.
<p>39/2020 - Central Tax, Dt-05-05-2020</p> <p>and</p> <p>39/2020- MGST, EO No. 110 Dt-13-05-2020</p>	<p>➤ <u>New GST Registration for corporate debtors undergoing Corporate Insolvency Resolution Process.</u></p> <ul style="list-style-type: none">• The following proviso shall be inserted in first paragraph of Notification 11/2020 of Central tax dated 21st March, 2020, namely: <p>Provided that the said class of persons shall not include those corporate debtors who have furnished the statements under section 37 and the returns under section 39 of the said Act for all the tax periods prior to the appointment of IRP/RP.”</p>

	<ul style="list-style-type: none"> • Time limit for registration extended due to COVID-19 by substituting the following to para 2 w.e.f. 21st March, 2020 <p>The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP or by 30th June, 2020, whichever is later.</p>
<p>40/2020 - Central Tax, Dt-05-05-2020</p> <p>and</p> <p>40/2020- MGST, EO No. 112 Dt-18-05-2020</p>	<p>➤ <u>The validity of e-way bills is extended till 31.05.2020 for those e-way bills which expire during the period from 20.03.2020 to 15.04.2020 and generated till 24.03.2020.</u></p>
<p>41/2020 - Central Tax, Dt-05-05-2020</p> <p>and</p> <p>41/2020- MGST, Dt-05- 05-2020</p>	<p>➤ <u>The due date for furnishing GST annual return/reconciliation Statement (GSTR9 / GSTR 9C) for financial year 2018-2019 is extended to 30th September, 2020</u></p>
<p>42/2020 - Central Tax, Dt-05-05- 2020,</p>	<p>➤ <u>Extension of the due date for furnishing FORM GSTR-3B, Jan-March, 2020 returns for the taxpayers registered in Ladakh and Jammu & Kashmir.</u></p> <ul style="list-style-type: none"> • The return in FORM GSTR-3B for the months of November, 2019 to February, 2020 for registered persons whose principal place of business is in the Union territory of Jammu and Kashmir, shall be furnished electronically through the common portal, on or before the 24th March, 2020. • The return in FORM GSTR-3B for the months of November, 2019 to December, 2019 for registered persons whose principal place of business is in the Union territory of Ladakh, shall be furnished electronically through the common portal, on or before the 24th March, 2020. • The return in FORM GSTR-3B for the months of January, 2020 to March, 2020 for registered persons whose principal place of business is in the Union territory of Ladakh, shall be furnished electronically through the common

	<p>portal, on or before the 20th May, 2020.</p> <ul style="list-style-type: none"> This notification shall be deemed to come into force with effect from the 24th March, 2020 						
<p>43/2020 - Central Tax, Dt-16-05-2020,</p>	<p>➤ <u>Seeks to bring into force Section 128 of Finance Act, 2020 in order to bring amendment in Section 140 of CGST Act w.e.f. 01.07.2017.</u></p> <ul style="list-style-type: none"> The Central Board of Indirect Taxes and Customs (CBIC) notified retrospective amendments to section 140 of CGST Act, granting it power to prescribe a time limit for availing transitioning credit – the credit from pre-goods and services tax (GST) regime which was moved to the GST regime as input tax credit from July 1, 2017. The Central Government hereby appoints the 18th day of May, 2020, as the date on which the provisions of Section 128 of the Finance Act, 2020, shall come into force. 						
<p>GST- 1020/C.R.15/ Taxation MGST, E.O. No.115 Dt-21-05-2020</p>	<p>➤ <u>Authorization of the officers under MGST Act 2017, as the Revisional Authority for revision of decision or orders as referred in section 108 of MGST Act</u></p> <ul style="list-style-type: none"> The Government of Maharashtra, hereby authorises the officers mentioned in column (2) of the Schedule appended hereto as the Revisional Authority for revision of decision or orders as referred in section 108 of the said Act. The Commissioner of State Tax All the Additional Commissioners of State Tax All the Joint Commissioners of State Tax All the Deputy Commissioners of State Tax 						
<p>GST- 1020/C.R.15A/ Taxation MGST, E.O. No.115 Dt-21-05-2020</p>	<p>➤ <u>Amedment in subordination of officers appointed under MGST Act</u></p> <ul style="list-style-type: none"> For the purpose of the State Tax Act all the officers and persons appointed under section 3 of the State Tax Act shall be subordinate to the Commissioner; and the officers, other than the Commissioner, mentioned in the column (3) of the Schedule appended hereto shall be subordinate to the officers mentioned in the column (2) thereof, namely: <table border="1" data-bbox="457 1633 1511 1978"> <thead> <tr> <th>Designation of officers</th> <th>Subordinate officers</th> </tr> </thead> <tbody> <tr> <td>Additional Commissioner and Special Commissioner</td> <td>Joint Commissioner</td> </tr> <tr> <td>Joint Commissioner, Additional Commissioner and Special Commissioner</td> <td>Deputy Commissioner</td> </tr> </tbody> </table>	Designation of officers	Subordinate officers	Additional Commissioner and Special Commissioner	Joint Commissioner	Joint Commissioner, Additional Commissioner and Special Commissioner	Deputy Commissioner
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Additional Commissioner and Special Commissioner	Joint Commissioner						
Joint Commissioner, Additional Commissioner and Special Commissioner	Deputy Commissioner						

		Deputy Commissioner, Joint Commissioner, Additional Commissioner and Special Commissioner	Assistant Commissioner or, as case may be, State Tax Officer
		State Tax Officer, Assistant Commissioner, Deputy Commissioner, Joint Commissioner Additional Commissioner and Special Commissioner.	officer or person appointed under, clause (g) of section 3 of the State Tax Act



SIGNIFICANT CIRCULARS

Sr. No.	Circular/ Order No.	Key Update						
1.	138/8/2020- Central Tax Dt-06-05-2020	<p>➤ <u>Seeks to clarify 'issues in respect of challenges faced by the registered persons in implementation of provisions of GST Laws'.</u></p> <table border="1"><thead><tr><th>Issue</th><th>Clarification</th></tr></thead><tbody><tr><td>Notification No.11/2020 Central Tax dated 21.03.2020, issued under section 148 of the CGST Act provided that an IRP/CIRP is required to take a separate registration within 30 days of the issuance of the notification. It has been represented that the IRP/RP are facing difficulty in obtaining registrations during the period of the lockdown and have requested to increase the time for obtaining registration from the present 30 days limit.</td><td><ul style="list-style-type: none">• Vide notification No. 39/2020- Central Tax, dated 05.05.2020, the time limit required for obtaining registration by the IRP/RP in terms of special procedure prescribed vide notification No. 11/2020 – Central Tax dated 21.03.2020 has been extended.• Accordingly, IRP/RP shall now be required to obtain registration within thirty days of the appointment of the IRP/RP or by 30th June, 2020, whichever is later.</td></tr><tr><td>The notification No. 11/2020– Central Tax dated 21.03.2020 specifies that the IRP/RP, in respect of a corporate debtor, has to take a new registration with effect from the date of appointment. Clarification has been sought whether IRP would be required to</td><td><ul style="list-style-type: none">• The notification No. 11/2020– Central Tax dated 21.03.2020 was issued to devise a special procedure to overcome the requirement of sequential filing of FORM GSTR-3B under GST and to align it with the provisions of the IBC Act, 2016. The said notification has been amended vide notification No. 39/2020 – Central Tax, dated 05.05.2020 so as to specifically provide that corporate debtors who have not defaulted in furnishing the return under</td></tr></tbody></table>	Issue	Clarification	Notification No.11/2020 Central Tax dated 21.03.2020, issued under section 148 of the CGST Act provided that an IRP/CIRP is required to take a separate registration within 30 days of the issuance of the notification. It has been represented that the IRP/RP are facing difficulty in obtaining registrations during the period of the lockdown and have requested to increase the time for obtaining registration from the present 30 days limit.	<ul style="list-style-type: none">• Vide notification No. 39/2020- Central Tax, dated 05.05.2020, the time limit required for obtaining registration by the IRP/RP in terms of special procedure prescribed vide notification No. 11/2020 – Central Tax dated 21.03.2020 has been extended.• Accordingly, IRP/RP shall now be required to obtain registration within thirty days of the appointment of the IRP/RP or by 30th June, 2020, whichever is later.	The notification No. 11/2020– Central Tax dated 21.03.2020 specifies that the IRP/RP, in respect of a corporate debtor, has to take a new registration with effect from the date of appointment. Clarification has been sought whether IRP would be required to	<ul style="list-style-type: none">• The notification No. 11/2020– Central Tax dated 21.03.2020 was issued to devise a special procedure to overcome the requirement of sequential filing of FORM GSTR-3B under GST and to align it with the provisions of the IBC Act, 2016. The said notification has been amended vide notification No. 39/2020 – Central Tax, dated 05.05.2020 so as to specifically provide that corporate debtors who have not defaulted in furnishing the return under
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		<p>take a fresh registration even when they are complying with all the provisions of the GST Law under the registration of Corporate Debtor (earlier GSTIN) i.e. all the GSTR-3Bs have been filed by the Corporate debtor / IRP prior to the period of appointment of IRPs and they have not been defaulted in return filing.</p>	<p>GST would not be required to obtain a separate registration with effect from the date of appointment of IRP/RP.</p> <ul style="list-style-type: none"> • Accordingly, it is clarified that IRP/RP would not be required to take a fresh registration in those cases where statements in FORM GSTR-1 under section 37 and returns in FORM GSTR-3B under section 39 of the CGST Act, for all the tax periods prior to the appointment of IRP/RP, have been furnished under the registration of Corporate Debtor (earlier GSTIN).
		<p>Another doubt has been raised that the present notification has used the terms IRP and RP interchangeably, and in cases where an appointed IRP is not ratified and a separate RP is appointed, whether the same new GSTIN shall be transferred from the IRP to RP, or both will need to take fresh registration.</p>	<ul style="list-style-type: none"> • In cases where the RP is not the same as IRP, or in cases where a different IRP/RP is appointed midway during the insolvency process, the change in the GST system may be carried out by an amendment in the registration form. Changing the authorized signatory is a non-core amendment and does not require approval of tax officer. However, if the previous authorized signatory does not share the credentials with his successor, then the newly appointed person can get his details added through the Jurisdictional authority as Primary authorized signatory. • The new registration by IRP/RP shall be required only once, and in case of any change in IRP/RP after initial appointment under IBC, it would be deemed to be change of authorized signatory and it would not be considered as a distinct person on every such change after initial appointment. Accordingly, it is clarified that such a change would need only change of authorized signatory which can be done by the authorized signatory of the Company who can add IRP /RP as new authorized signatory or failing that it can be added by the concerned jurisdictional officer on request by IRP/RP.

Other COVID-19 related representations.	
<p>As per notification no. 40/2017- Central Tax (Rate) dated 23.10.2017, a registered supplier is allowed to supply the goods to a registered recipient (merchant exporter) at 0.1% provided, inter-alia, that the merchant exporter exports the goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier. Request has been made to clarify the provision vis-à-vis the exemption provided vide notification no. 35/2020-Central Tax dated 03.04.2020.</p>	<ul style="list-style-type: none"> • Vide notification No. 35/2020-Central Tax dated 03.04.2020, time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020, where completion or compliance of such action has not been made within such time. • Notification no. 40/2017-Central Tax (Rate) dated 23.10.2017 was issued under powers conferred by section 11 of the CGST Act, 2017. The exemption provided in notification No. 35/2020-Central Tax dated 03.04.2020 is applicable for section 11 as well. • Accordingly, it is clarified that the said requirement of exporting the goods by the merchant exporter within 90 days from the date of issue of tax invoice by the registered supplier gets extended to 30th June, 2020, provided the completion of such 90 days period falls within 20.03.2020 to 29.06.2020.
<p>Sub-rule (3) of that rule 45 of CGST Rules requires furnishing of FORM GST ITC-04 in respect of goods dispatched to a job worker or received from a job worker during a quarter on or before the 25th day of the month succeeding that quarter. Accordingly, the due date of filing of FORM GST ITC-04 for the quarter ending March, 2020 falls on 25.04.2020. Clarification has been sought as to whether the extension of time limit as provided in terms of notification No. 35/2020-Central Tax dated</p>	<ul style="list-style-type: none"> • Time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020 where completion or compliance of such action has not been made within such time. Accordingly, it is clarified that the due date of furnishing of FORM GST ITC-04 for the quarter ending March, 2020 stands extended up to 30.06.2020.

		03.04.2020 also covers furnishing of FORM GST ITC-04 for quarter ending March, 2020.	
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For detailed Notifications, Orders and Circulars kindly follow below link-
<http://www.cbic.gov.in/hdocs-cbec/gst/central-tax-notfns-2017>



RECENT CASE LAWS

1. Whether overseas laboratory services received by DKMS BMST Foundation falls under health care services and is exempt from tax leviable thereon?

Applicant	M/s DKMS BMST Foundation India
Journal of Publication	KAR ADRG 24/2020
Date of Ruling	23/04/2020
Ruling Authority	Authority for Advance Ruling in Karnataka

FACTS

- The applicant states that they are a joint venture of two reputed non-profit organizations, BMST and DKMS, one of the largest international not for profit blood stem cell donor centres in the world and is a company incorporated under section 8 of Companies Act.
- The tests conducted by the laboratory to identify and list potential donors is an integral step in the treatment of an illness i.e. blood cancer and hence the said laboratory services would be classifiable as health care services provided by a clinical establishment and therefore exempt from tax leviable thereon.
- Further the applicant states that the services being provided by LSL DE would be provided outside India and after making the goods physically available to the supplier of services who is located outside India and hence the place of supply of services should be outside India under section 13(3) of the IGST Act.

ISSUE

- Whether overseas laboratory services received by DKMS BMST Foundation falls under health care services and is exempt from tax leviable thereon?

HELD

- The services of HLA received by DKMS BMST Foundation India from the overseas laboratory is covered under the definition of health care services by a clinical establishment and thereby is exempted from IGST leviable thereon and accordingly not taxable in the hands of the applicant under reverse charge mechanism.
- The applicant is not liable to pay IGST on services performed by the overseas laboratory outside India on the Human Buccal Swabs sent by DKMS BMST from India.

2. Allowing all assesseees to claim ITC in GST TRAN-1 by 30.06.2020.

Applicant	Brand Equity Treaties Limited
Journal of Publication	W.P. (C) 11040/2018
Date of Ruling	05/05/2020
Ruling Authority	Delhi High Court

FACTS
<ul style="list-style-type: none">• The petitioner claims that in terms of the latest service tax return from April, 2017 to June, 2017, it had accumulated CENVAT credit balance of 72,80,529/-• Petitioner forms part of bigger conglomerate and the tax operations are undertaken at group level.• Owing to dependence at group level in the context of tax compliances and multiple entities involved, petitioner was unable to file the declaration in Form TRAN-1 within the prescribed due date.• As a result, it was deprived of taking forward the accumulated credit in the GST regime.
ISSUE
<ul style="list-style-type: none">• Whether ITC can be claimed in TRAN-1 by 30.06.2020?
HELD
<ul style="list-style-type: none">• Delhi High Court has held that period of 90 days for claiming input tax credit in TRAN-1 is directory and therefore, period of limitation of 3 years would apply.• The court has directed the department to allow all assesseees to claim input tax credit in TRAN-1 by 30.06.2020.• The direction would apply to all those who could not file TRAN-1 and claim input tax credit.• The court has further directed that all taxpayers who have not filed TRAN-1 can do so by 30.06.2020.• The judgement has been made applicable to all irrespective of whether the taxpayer has approached the court or not.

3. AAR Ruling on Applicability of GST Composition Scheme and Applicable Tax Rate

Applicant	Sri Ghalib Iqbal Sheriff, proprietor of M/s Empathic Trading Centre
Journal of Publication	KAR ADRG 28/2020
Date of Ruling	23/04/2020
Ruling Authority	THE AUTHORITY FOR ADVANCE RULING IN KARNATAKA

FACTS

- The applicant states that they are into two lines of business, one for the supply of goods and other for the renting of immovable property. He states that he is eligible for composition scheme as his aggregate annual turnover is much less than Rs.50 Lakhs as the scheme is applicable to both sale of goods and renting of immovable property service provision.
- The applicant contends that the supply of goods (sales) and the supply of service (rent) are unrelated and totally unconnected and hence he is liable to pay 1% as composition tax on supply of goods and 6% on the supply of service (rent), and the two amounts totaled and paid.

ISSUE

- Whether he is eligible to be in the composition scheme as his aggregate turnover is much less than Rs. 50,00,000/-?
- Whether the rate of composition tax applicable is 1% for the turnover of goods (sales) and 6% for the turnover of service (rent). The two separate taxes amounts to be totalled and paid or is it 6% as a whole for the aggregate turnover of goods and service turnover that is to be paid?

HELD

- The applicant is eligible to be in the composition scheme under section 10 of the CGST Act, 2017 if the turnover of services of the applicant does not exceed ten per cent of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.
- The applicant is not eligible to opt to pay tax under the Notification No.2/2019- Central Tax (Rate) dated 07.03.2019 and under the Notification (02/2019) No. FD 48 CSL 2017 dated 07.03.2019 of the Government of Karnataka as the applicant is registered as a Composition Taxpayer.
- The rate of tax applicable on the entire value is 3% CGST and 3% KGST and he cannot pay tax at 1% on supply of goods and 6% tax on the supply of services.

4. Applicant seeks the procedure to be followed under GST Act for discharging GST Liability

Applicant	M/s Dolphine Die Cast Pvt Ltd
Date of Ruling	20/05/2020
Ruling Authority	Authority for Advance Ruling in Karnataka

FACTS

- Applicant first manufactures steel die as per requirements and specifications given by foreign customer. After seeking approval from foreign customer, applicant uses steel die for making aluminium and zinc die castings.
- These are exported to overseas customers. However, applicant retains steel die till completion of export order or completion of life of die.
- Applicant raises tax invoice for steel die in the name of overseas customer in foreign currency for receipt of payment though die is not physically exported to foreign customer.
- After completion of export order, applicant either exports dies to overseas customer or scraps die at applicants end as per instruction of customer.

ISSUE

- Applicant seeks the procedure to be followed under GST Act for discharging GST Liability.

HELD

- The date of issuance of tax invoice by applicant shall be construed as time of supply to foreign customer as per section 12 of CGST Act.
- Further, as per section 10(1) of IGST Act, where the supply of goods does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of delivery to the recipient.
- The place of supply shall be location of applicant, accordingly location of supplier of die and place of supply of die to foreign customer being same, transaction shall be treated as intra-state transaction under section 8(1) of IGST Act and thus applicant has to issue CGST/SGST tax invoice to foreign customer and liable to collect and pay CGST/SGST tax.

5. Applicability of GST for Hotel Accommodation and related services.

Applicant	M/s. Srisai Luxurious Stay LLP
Journal of Publication	KAR ADRG 20/2020
Date of Ruling	31/03/2020
Ruling Authority	Authority of Advance Ruling, Karnataka

FACTS

- The applicant is a Limited Liability Partnership concern, not registered under GST, and involved in the business of developing, running, maintaining, operating, setting up, owning, dealing in, buying, selling, renting, subletting, and managing paying guest accommodations, service apartments, flats aimed to suit all type of customers by whatever name called.
- The applicant has sought advanced ruling in respect of the following questions:
 1. Whether the daily accommodation service ranging from Rs.300 to Rs.500 per bed are eligible for exemption under Notification No.12/2017- Central Tax?
 2. Whether the monthly accommodation services ranging from Rs.6,900 to Rs. 12,500 per bed is eligible for exemption under Notification No.12/2017- Central Tax?
 3. Whether the said notification would be applicable if the LLP decides to charge additional charges for the extra facilities opted by the inhabitants in addition to the facilities that are currently included in the tariff received by the inhabitants, but the overall price would be less than the present exemption limit of Rs. 1,000 per day per unit?

ISSUE

- As per Notification 11/2017 – Central Tax (Rate), supply of ‘hotel accommodation’ service will be taxable under GST at the prescribed rates depending on their daily tariffs.
- However, entry 14 of Notification No. 12/2017- Central Tax (Rate) states that services by a hotel, inn, guest house, club or campsite by whatever name called, for residential or lodging purpose, covered under SAC 9963, having a declared tariff of a unit of accommodation **below one thousand rupees per day or equivalent will be exempt** under GST.
- In the given case, the maximum monthly tariff is to Rs. 12,500, which would amount to Rs.416 per day. Also, the maximum daily tariff is Rs. 500. Both of these amounts fall well under the taxability threshold tariff of Rs. 1000 per day.
- Apart from accommodation, the entity provides ancillary services such as breakfast, lunch, dinner, housekeeping, washing machine facilities, Internet (Wi-Fi), vehicle parking etc.

- These services are in addition to the compulsory services provided along with accommodation and are charged for separately. Hence, it would amount to provision of services under a separate contract, and independent of the accommodation facilities.
- Also, the services provided along with accommodation facilities form a package, and thus they would be treated as '**Composite Supply**' under Section 8 of the CGST Act, 2017.

HELD

- The daily accommodation services ranging from Rs. 300 to Rs. 500 per bed are eligible for exemption under Notification No 12/2017- Central tax (Rate) dated 28.06.2017.
- The monthly accommodation services ranging from Rs. 6,900 to Rs. 12,500 per bed are eligible for exemption under Notification No 12/2017- Central tax (Rate) dated 28.06.2017.
- If the applicant charges for extra facilities opted by inhabitants in addition to the facilities included in the tariff, but the overall price would be less than the present exemption limit of Rs.1000 per day, the same will be liable to tax at the rates applicable to them assuming them to be independent supplies, if they do not belong to SAC Group 9963. If they belong to the Group 9963, they will be exempted under Notification No 12/2017- Central tax (Rate) dated 28.06.2017.

6. Allowance of rectification of GST returns of 2017

Applicant	Bharti Airtel Limited
Journal of Publication	W.P.(C) 6345/2018
Date of Ruling	05/05/2020
Ruling Authority	High Court of Delhi

FACTS

- The Petitioner, Bharti Airtel Ltd. recounts several issues which cropped up and had a significant impact on tax paid, the output liability, and the ITC which led to occurrence of several inadvertent errors.
- During the period from July, 2017 to September, 2017 (hereinafter referred to as 'the relevant period'), the Petitioner in its monthly GSTR- 3B recorded the ITC based on its estimate. As a result, when the Petitioner had to discharge the GST liability for the relevant period, the details of ITC available were not known and the Petitioner was compelled to discharge its tax liability in cash.
- The exact ITC available for the relevant period was discovered only later in the month October 2018, when the Government operationalized Form GSTR-2A for the past periods.

ISSUE

- The petitioner wanted to rectify the returns but was prevented as there was no enabling statutory procedure implemented by the government.
- Airtel contested that there was no rationale for not allowing rectification in the month for which the statutory return has been filed and consequently seek refund of the excess taxes paid amounting to Rs. 923 crores.

HELD

- Delhi High Court held that the **failure of the Government to operationalize the statutory returns, GSTR 2, 2A and 3 prescribed under the CGST Act, cannot prejudice the assessee.**
- The GSTR 3B which was merely a summary return as an alternative did not have the statutory features of the returns prescribed under the Act.
- Therefore, if there were errors in capturing ITC on account of which cash was paid for discharging GST liability instead of utilizing ITC which could not be captured correctly at that time, the return should be allowed to be rectified in the very month in which the ITC was not recorded and the cash paid should be available as refund.
- The High Court gave reference to **Circular No. 26/26/2017-GST dated 29.12.2017** which did not permit such rectification as being contrary to the scheme of the CGST Act and stated that on filing of the rectified Form GSTR-3B, they shall, within a period of two weeks, verify the claim made therein and give effect to the same once verified.

7. Whether ITC can be claimed if a taxpayer purchases goods from second hand dealers who has opted for margin scheme of valuation for payment of GST?

Applicant	M/s Attica Gold Private Limited
Journal of Publication	KAR ADRG 15/2020
Date of Ruling	23-03-2020
Ruling Authority	Karnataka Authority for Advance Ruling (AAR)

FACTS
<ul style="list-style-type: none">• M/s Attica Gold Private Limited is in the business of sale of used (second-hand) goods.• The applicant purchases used gold jewelry from unregistered persons and sells the same to others after cleaning and polishing.
ISSUE
<ul style="list-style-type: none">• Whether tax can be paid on the difference between the selling price and purchase price as per the rule 32(5) of CGST Rules, 2017?• Whether ITC is allowed to be claimed if purchases are made from the dealer to whom marginal scheme is applicable?
HELD
<ul style="list-style-type: none">• Rule 32(5) of CGST Rules, 2017 states that if the supplier is dealing in second hand goods which are sold only after minor processing which does not change the nature of the goods then, the value of supply shall be the difference between selling price and the purchase price and where the value of such supply is negative, it shall be ignored provided no ITC has been claimed for the same.• It was held that tax can be paid as per the rule 32(5) of CGST Rule, 2017 as the applicant is dealing in second hand goods and invoicing his supplies as “second hand goods” which are purchased from unregistered individual and there is no change in the form and nature of such goods.• If the applicant purchases second hand jewelry from registered person, then applicant is eligible to claim ITC on such inward supplies. If he claims the ITC then he would not be eligible for the marginal scheme of valuation as prescribed in rule 32(5) of CGST Rules, 2017 for outward supplies of such second-hand jewelry.

8. Availability of ITC on detachable sliding and stackable glass partitions

Applicant	M/s Wework India Management Private Limited
Journal of Publication	KAR/AAAR-17/2019-20
Date of Ruling	06/03/2020
Ruling Authority	Karnataka Appellate Authority for Advance Ruling (AAAR)

FACTS

- The applicant is engaged in the business of providing shared workspaces/office spaces to freelancers, startups, small businesses and large enterprises.
- The applicant had acquired detachable 14mm engineered wood with Oak top wooden flooring and detachable sliding and stacking glass partitions.
- The applicant had previously sought the opinion of the AAR which opined that the input from the detachable sliding and stacking glass partitions cannot be taken, while the input regarding detachable wooden flooring can be taken.
- The applicant provides that the detachable glass partitions can be dismantled and re-used as per the requirements of its clients and hence claims that the same does not qualify to be an immovable property under GST.
- The detachable glass partition is capitalized in the books of the company under furniture and fixtures and not under building.

ISSUE

- Whether the input credit can be availed by the applicant on the detachable sliding and glass partition which is movable in nature and capitalized as “furniture and fixtures”, and is not capitalized in the books as an immovable property?

HELD

- The authority states that input of tax charged on supply of goods and services can be availed by the taxpayer if such goods or services are used in course or furtherance of business subject to Sec 16(2) and Sec 17(5) of the CGST Act, 2017.
- As per Sec 17(5)(d) of the CGST Act, 2017 input cannot be availed in respect of goods or services or both received by a taxable person for construction of immovable property (other than plant and machinery) on his own account.
- The authority took the reference of the definition of immovable property given under General Clauses Act, 1897. The detachable glass partition and sliding was out of scope of the definition of immovable property according to the authority.
- Thus, it was held that the applicant can claim the ITC on detachable sliding and glass partition **since the same does not qualify as immovable property and as they are capitalized in the books as furniture and fixtures.**

9. Incomes to be included in determining Aggregate Turnover for the purpose of GST Registration

Applicant	M/s Anil Kumar Agrawal
Journal of Publication	KAR ADRG 30/2020
Date of Ruling	04.05.2020
Ruling Authority	Karnataka Authority for Advance Ruling (AAR)

FACTS

- The applicant is in receipt of salary from the company in which he is the director. Along with the salary, the applicant has also received rent from commercial property, rent from residential property, interest from Deposits, Loans and Advances.

ISSUE

- Whether income received towards Salary/ Remuneration as a Non- Executive Director of a Private Limited company is to be included in aggregate turnover for registration?
- Whether income received from renting of Commercial and Residential property is to be included in the aggregate turnover?
- Whether income received towards interest from deposits, loans and advances is to be included in aggregate turnover?

HELD

- The income received towards Salary as a Director of a Private Limited Company is to be included in aggregate turnover for registration as **taxable supply only if it is received as a non-executive director. In case it is received as an employee of the company, then it does not fall under the purview of GST.**
- The income received towards interest from extended deposits/ loans/ advances and Rent from Commercial property are to be included in aggregate turnover as it is a taxable supply.
- The income received from renting of residential property is to be included in the aggregate turnover, although it is an exempted supply.
- **Any income received by a partner of a partnership firm – either by way of salary or share of profit does not fall under the purview of GST** and is not included in aggregate turnover.

10. No separate GST registration is required for the execution of works contract in other states

Applicant	M/s T & D Electricals
Journal of Publication	KAR ADRG 18/2020
Date of Ruling	31/03/2020
Ruling Authority	Karnataka Authority for Advance Ruling (AAR)

FACTS
<ul style="list-style-type: none">• The Applicant is registered as a works contractor and wholesale supplier in Jaipur.• They have been awarded a contract by M/s Shree Cement Limited, Rajasthan for electrical, instrumentation, and IT jobs at the township, Karnataka Cement Project.
ISSUE
<ul style="list-style-type: none">• Whether separate registration is required in Karnataka state?• If registration is not required in Karnataka state and if the applicant purchase goods from the dealer of Rajasthan and wants to ship goods directly from the premises of the dealer of Rajasthan to the township at Karnataka then whether CGST & SGST would be charged from us or IGST by the dealer of Rajasthan?• If registration is not required in Karnataka state and if the applicant purchases goods from the dealer of Karnataka to use the goods at township at Karnataka then whether IGST would be charged from us or CGST & SGST by the dealer of Karnataka?
HELD
<ul style="list-style-type: none">• The applicant does not need to obtain separate registration in Karnataka, to execute the project in Karnataka. However, they are at liberty to obtain the said registration, if they are able & intend to have a fixed establishment at the project site in Karnataka.• The dealer in Rajasthan has to charge CGST & SGST when the goods, purchased by the applicant, are shipped to the project site in Karnataka, under the bill to ship to the transaction in terms of Section 10(1)(b) of the IGST Act 2017.• The dealer in Karnataka has to charge IGST when the goods, purchased by the applicant, are shipped to the project site in Karnataka, under the bill to ship to the transaction in terms of Section 10(1)(b) of the IGST Act 2017.



Hinesh R. Doshi & Co. LLP
Chartered Accountants

Palai Plaza, 3rd floor,
9, Kohinoor Road,
Opp. Hotel Pritam,
Dadar (East), Mumbai-400 014

Contact us:
Tel:- +91-22-66008100/8111
E-mail: info@hineshodoshi.com
Website: www.hineshrdoshicollp.com